

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
v.	:	
	:	NO. 22-290
KHYREE PRATT	:	
	:	

MEMORANDUM

SURRICK, J

NOVEMBER 4, 2024

Presently before the Court is Defendant Khyree Pratt’s (“Defendant” or “Pratt”)’s *pro se* Motion for “Status Points” Reduction Pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 821. (Mot., ECF No. 29.) Pratt seeks a sentence reduction based on Amendment 821 to the United States Sentencing Commission Federal Sentencing Guidelines (“Guidelines”). For the following reasons, Defendant’s Motion will be denied.

I. BACKGROUND

On September 7, 2022, Khyree Pratt was charged in a one-count Indictment with possession of a firearm by a felon in violation of 21 U.S.C. § 922(g)(1). (Indictment, ECF No. 1.) On March 15, 2023, Defendant entered a plea of guilty to this charge pursuant to a Rule 11(c)(1)(C) plea agreement with the Government. (*See* ECF Nos. 17, 18 (on file with Court).) In the plea agreement, the parties agreed on a term of imprisonment of 36-57 months imprisonment followed by a three-year period of supervised release. (ECF No. 17.) Defendant’s initial Presentence Investigation Report (“PSR”) calculated his total offense level

as 23, which included a 4-level increase under U.S.S.G. § 2K2.1(b)(6)(B),¹ and his criminal history as 9, placing him in criminal history category IV. (PSR ¶¶ 25, 34-41 (on file with Court).) The criminal history category resulted from a subtotal criminal history score of 7, plus 2 status points added pursuant to U.S.S.G. § 4A1.1(d) because Pratt committed the instant offense while under a criminal justice sentence of probation. (*Id.* ¶¶ 39-41.)

At Defendant's June 15, 2023, sentencing hearing, the Court directed that the PSR be adjusted to remove the 4-level enhancement under U.S.S.G. § 2K2.1(b)(6)(B),² and otherwise adopted the PSR. (6/15/23 Hr'g Tr. 3-4; *see also* revised PSR ¶ 25 (on file with Court).) Defendant's adjusted total offense score of 19 and criminal history category of IV resulted in an advisory Guidelines range of 46-57 months. (*Id.* at 4.) The Court sentenced Defendant to an imprisonment term of 50 months, which was within the Guidelines range and the range recommended in the parties' plea agreement. (*Id.* at 18; Judgment at 2, ECF No. 26.)

Pratt's Motion seeks a sentence reduction based on the "status points" provision of Amendment 821 to the Guidelines. In opposition, the Government argues that Pratt is not entitled to a reduction because Amendment 821 does not lower his Guidelines range. (Gov't Opp., ECF No. 30.)

II. LEGAL STANDARD

A district court generally may not modify a term of imprisonment after it has been imposed, but it may do so when the adopted sentencing range has been lowered by the

¹ This provision calls for a 4-level increase in the offense level if the defendant "used or possessed any firearm or ammunition in connection with another felony offense." U.S.S.G. § 2K2.1(b)(6)(B)

² At the sentencing hearing, the Government advised that it did not have the evidence to support the 4-level enhancement. (6/15/23 Hr'g Tr. at 3-4, ECF No. 27.)

Sentencing Commission after the sentence is final and the Commission makes the Guidelines amendment retroactive. 18 U.S.C. § 3582(c); *Dillon v. United States*, 560 U.S. 817, 821 (2010). To evaluate whether a defendant is entitled to a sentence reduction due to an amendment of the Guidelines, “the Court: (1) determines the defendant’s eligibility for a reduced sentence and calculates their amended Guidelines range if they are eligible; and (2) considers any applicable [18 U.S.C. §] 3553(a) factors.” *United States v. Banks*, No. 19-431, 2024 WL 919835, at *1 (E.D. Pa. Mar. 4, 2024) (citing *Dillon*, 560 U.S. at 826-27). In determining eligibility for a reduced sentence, courts must follow the instructions provided by Section 1B1.10 of the Guidelines. *Id.* “If a retroactive amendment to the Guidelines ‘does not have the effect of lowering the defendant’s applicable guideline range,’ a reduction in the defendant’s sentence is inconsistent with the Commission’s policy statements and therefore not authorized by Section 3582(c)(2).” *Id.* (quoting U.S.S.G. § 1B1.10(a)(2)(B)).

III. DISCUSSION

Applying the Guidelines’ amended status points provision, Pratt would receive 1 point because he committed the instant offense while under a criminal justice sentence of probation, instead of the 2 points he received at the time of sentencing. Although this would reduce his criminal history score to 8, a criminal history score of 7, 8, or 9 still results in a criminal history category of IV. *See* U.S.S.G. Sentencing Table, Ch. 5, Pt. A. Accordingly, Pratt’s criminal history category remains IV and his Guidelines range of 46-57 months is unchanged. Because Pratt’s Guidelines range is not lowered by Amendment 821, a reduction is not authorized by 18 U.S.C. § 3582(c)(2). *See, e.g., United States v. Tate*, No. 24-1397, 2024 WL 1988830, at *1 n.4 (3d Cir. May 6, 2024) (noting that the defendant was not eligible for relief under § 3582(c)(2) based on Amendment 821 because it did not change his criminal history category and sentencing

range, which were set by his designation as a career offender); *United States v. White*, No. 21-460, 2024 WL 1557365, at *3-4 (E.D. Pa. Apr. 10, 2024) (concluding that the defendant was ineligible for a sentence reduction under § 3582(c)(2) because Amendment 821 did not reduce his criminal history category or Guidelines range).

IV. CONCLUSION

For the foregoing reasons, Defendant's *pro se* Motion will be denied. An appropriate Order follows.

BY THE COURT:

/s/ R. Barclay Surrick

R. BARCLAY SURRICK, J.